IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9146 of 1999

with

SPECIAL CIVIL APPLICATION No 9147 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

NARANBHAI DAHYABHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR AM RAVAL for Petitioner No. 1-2

MR ND GOHIL, AGP for Respondent No. 1

MS SEJAL K MANDAVIA for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 27/09/2004

ORAL JUDGEMENT

In these petitions, the petitioners who were working as primary school teachers in different schools run by the District Panchayat, Bharuch, have claimed the relief of stepping up of their pay at the level of their juniors Shri Purshottambhai Dhirubhai Patel and Shri Balubhai Gumabhai Patel.

2. It is the case of the petitioners in these petitions that the Government had initially introduced a scheme for granting higher pay-scales for those teachers who had not received any promotions and therefore stagnated in the same scale. It is their case that by resolution dated 5th July 1991, a scheme was introduced by the Government for grant of higher pay-scales upon completion of 9 years, 18 years and 27 years of stagnation in the same cadre. The petitioners submit that thereafter by another resolution dated 16th August 1994, a new scheme for giving higher scale was introduced. It is the case of the petitioners that on account of the introduction of the scheme of 16th August 1994, the pay of the petitioners was fixed at a stage lower than that of their juniors named hereinabove. The petitioners, therefore, claim that their pay should be stepped up and brought on par with that of their juniors. The petitioners submit that stepping up is permissible and required under clause 3(17) of the G.R. dated 16th August 1994. They also claimed the stepping up on the basis of rule 41-A of the Bombay Civil Services Rules (BCSR).

3. Appearing for the petitioners, learned advocate Shri A.M. Raval has submitted that the petitioners were admittedly drawing less pay than their juniors and that therefore it is a clear case of stepping up of pay. He has pointed out clause 3(17) of the G.R. dated 16th August 1994 and contended that since admittedly, the anomaly in pay of the petitioners vis-a-vis their juniors has arisen on account of the introduction of the scheme, the request for stepping up of their pay should have been accepted. He submits that independent of the provisions of the scheme, the Government of Gujarat instructions under rule 41-A of the BCSR also require that stepping up of pay should be done in such cases. He has submitted that there cannot be any Government resolution or circular contrary to the statutory provisions and in particular rule 41-A of the BCSR. He has further submitted that had the petitioners been made aware of the introduction of the scheme under the resolution dated 16th August 1994, the petitioners might have contemplated early retirement to protect their pay.

4. Appearing for the respondent No.2 in these petitions, learned advocate Ms.Mandavia has submitted that this is not a case for stepping up since the juniors were drawing more pay not on account of the introduction of the scheme vide circular dated 16th August 1994, but on account of the fact that their pay was fixed under the earlier G.R. dated 5th July 1991 and they retired from the Panchayat service before the introduction of the new scheme circulated vide G.R. dated 16th August, 1994. She has particularly drawn my attention to the provisions of the G.R. wherein it is provided that for those teachers who have retired prior to 1st August 1994, there will be no recovery of amount paid in excess nor will there be a requirement of refixing their pay in terms of the said G.R.

5. From the perusal of the G.R. dated 16th August, 1994, it becomes clear that though the Government had by earlier circular dated 5th July 1991 introduced a scheme for grant of higher pay-scale upon stagnation for 9, 18 and 27 years of service, the implementation of the said scheme and continuation thereof was causing increasing financial burden to the Government. The Government, therefore, formed a new Committee to examine the issue and pursuant to the recommendations of the Committee, formulated a new scheme which was circulated vide G.R. dated 16th August, 1994. In the said scheme, it was specifically provided that instead of the earlier scheme for granting higher pay-scale upon completion of 9, 18 and 27 years of service in the same scale, the new scheme would be applicable to the teachers and the benefits of higher scale would be available only upon completion of 9 years, 20 years and 31 years respectively. As mentioned above, in the scheme, it was also clarified that those teachers who had retired before 1st August 1994 would not have to refund any of the pay already given to them nor would their pay fixation be varied on account of the introduction of the new scheme.

6. From the perusal of the scheme and the salient features as noted above, it becomes clear that the new scheme was introduced by the Government on 16th August 1994 to reduce the financial burden being carried by the Government on account of the introduction of the scheme for higher pay fixation upon 9, 18 and 27 years of stagnation in the same scale. To reduce the burden to some extent, the Government introduced a new scheme and provided that the teachers would get the first higher pay fixation after 9 years of stagnation, second pay fixation in the higher scale after 20 years of stagnation and similarly third higher pay fixation upon 31 years of

stagnation in the same cadre. Accordingly, the pay-scale of the petitioners was fixed by applying the provisions of G.R. dated 16th August 1994. As can be seen from the affidavit in reply filed by the respondent No.2, Shri Purshottambhai Patel retired on 30th June 1994 and Shri Balubhai Patel retired on 31st January 1993. Both these persons though amdittedly juniors to the petitioners herein having retired prior to 1st August 1994 were allowed to retain the benefits under the old scheme of 5th July 1991 whereas in case of the petitioners, the provisions of the new scheme dated 16th August 1994 were applied. The question, therefore, is whether this is a fit case for granting of stepping up of pay in favour of the petitioners on par with their juniors. The petitioners, as mentioned above, have relied upon the provisions of the scheme under G.R. dated 16th August, 1994 itself as well as the Government of Gujarat instructions under rule 41-A of the BCSR. Under the scheme of 16th August 1994, it is clearly provided that on account of the introduction of the scheme for higher pay-scale if the junior teacher is getting more pay than the senior teacher, he will be granted stepping up subject to fulfillment of all conditions for the same. The conditions for stepping up are to be found under the Government of Gujarat instructions under rule 41-A of the BCSR and they are as follows:-

"(1) Both the junior and the senior Government servants shall belong to the same cadre and the posts in which they have been promoted shall be identical and in the same cadre;

(2) The time scale of the pay of the lower posts held by the senior and junior Government servants are identical and that the time scale of the posts involving greater responsibilities and duties to which the Government servants are appointed are identical.

(3) The Senior Government servant had not been appointed to the post involving greater responsibilities and duties, earlier than the junior Government servant he would have been eligible to draw pay of the lower post at a stage not lower than the admissible to the Junior Government servant immediately prior to the appointment of the Junior Government servant to the higher post:

Provided that on and after the 2nd April 1973 in all cases wherein the date of next increment falls due after the re-fixation of pay of the senior Government servant with reference to the pay of his junior, the next increment shall occur to him after he has rendered the qualifying service which is necessary for driving such increment from the stage at which his pay had been re-fixed.

(4) The difference in the pay of the senior and the junior Government servant has arisen as a result of the application of this rule;

(5) The pay of senior Government servant so increased shall not be reduced on reversion of the junior Government servant nor shall it be increased again with reference to the pay of the same officer on repromotion."

7. For the petitioners to claim stepping up of pay, therefore, they shall have to fall under the provisions of the G.R. dated 16th August 1994 as well as fulfill the conditions of the Government of Gujarat instructions under rule 41-A of the BCSR. To begin with, in the present case, the anomaly in the pay has arisen not on account of the introduction of the scheme for higher pay scale circulated as per G.R. dated 16th August 1994. But on account of the fact that the juniors to the petitioners retired earlier to the introduction of the scheme of 16th August 1994 and they were allowed to retain the benefits of the earlier scheme circulated as per G.R. dated 5th July 1991. Secondly, the case of stepping up of pay of a Government servant must also otherwise strictly fall within the parameters laid down by the Government for such a purpose. It cannot be gainsaid that the claim of a Government servant for stepping up of pay to that of his junior must fall within the parameters of the scheme for stepping up. In the case of Union of India v. R.Swaminathan, (1997) 7 SCC 690, the Hon'ble Supreme Court considered the claims of the employees for stepping up of pay on the ground that their juniors were drawing more pay on account of the fact that the juniors were promoted to officiate on promotional posts on local ad-hoc promotions while seniors were not so officiating before their regular promotion. It was contended on behalf of the seniors that their pay should be stepped up at the level of the

juniors as the juniors are admittedly drawing more pay in the promotional posts. The Hon'ble Supreme Court was pleased to hold that the junior employees who have got higher pay on promotion than their seniors had officiated in the promotional posts for different periods on account of the local ad-hoc promotions granted to them and it was because the Department of Telecommunications is divided into number of circles within the country. In that view of the matter, the Hon'ble Supreme Court was pleased to hold that the case of the seniors would not satisfy the conditions for stepping up of pay provided under the instructions dated 4.2.66 under FR 22-C. It was further observed that whether for short term vacancies the promotions are to be given on local basis or whether the vacancies have to be filled on the basis of All India seniority is a matter of administrative policy. However, the employees who have not officiated in the higher post earlier will not get the benefit of the proviso to FR 22. Accordingly, appeal of the Union of India was allowed.

8. In the present case, as discussed earlier, I find that the anomaly in the pay of the petitioners vis-a-vis their juniors did not arise on account of the introduction of the scheme vide circular dated 16th August 1994, but on account of the entirely different reasons, viz. juniors retired prior to the modification of the earlier scheme of 5th July 1991 and by specific provisions by the subsequent resolution dated 16th August 1994, juniors who had retired prior to 1st August 1994 were allowed to retain the benefits of more liberal scheme under the G.R. dated 5th July 1991. This, therefore, is obviously not a case for stepping up of pay by removing the anomaly as contended by the petitioners. This is also not a case where by circular dated 16th August 1994 any statutory provisions are sought to be undermined as suggested by the learned advocate for the petitioners.

9. I also do not find any merits in the contention of the counsel for the petitioners that had the Government announced the subsequent scheme well in advance, the petitioners would have opted for voluntary retirement to retain the benefits of the earlier scheme of 5th July 1991. When the Government formulates its policy, it is open for the Government to modify the same within the parameters of the law. No requirement has been pointed out by the learned advocate for the petitioners that such policy must be given wide publicity in advance before the same can be implemented.

10. On all counts, therefore, I do not find any

merits in the petitions and the petitions are, therefore, hereby rejected. Rule discharged with no order as to costs.

(Akil Kureshi, J.)
(vjn)